

[4910-13]

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

[Docket No. FAA-2004-16944]

**Operating Limitations at Chicago O'Hare International Airport; Order To Show Cause and Request for Comments**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Order To Show Cause and request for comments.

**SUMMARY:** The FAA has issued an order to show cause, which solicits the views of interested persons on the FAA's tentative determination to modify the August 2004 order temporarily limiting scheduled operations at O'Hare International Airport (O'Hare). The text of the order to show cause is set forth in this notice.

**DATES:** Any written information that responds to the FAA's order to show cause must be submitted by September 29, 2006.

**ADDRESSES:** You may send comments, identified by docket number FAA-2004-16944, using any of the following methods:

- DOT Docket web site: Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.
- Government-wide rulemaking web site: Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; US Department of Transportation, 400 Seventh Street, S.W., Nassif Building, Room PL-401, Washington, DC 20590-0001.

- Fax: 1-202-493-2251.
- Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, S.W., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to <http://dms.dot.gov>, including any personal information you provide.

Using the search function of our docket web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the Federal Register published on April 11, 2000 (65 FR 19477-19478) or you may visit <http://dms.dot.gov>.

Docket: To read background documents or comments received, go to <http://dms.dot.gov> at any time or to Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, S.W., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Komal Jain, Office of the Chief Counsel, Regulations Division, AGC-240, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3073.

#### **SUPPLEMENTARY INFORMATION:**

##### **Order To Show Cause**

The Federal Aviation Administration (FAA) has tentatively determined that it is necessary to modify the August 2004 order, as amended, (the Order) temporarily limiting scheduled operations at O'Hare International Airport (O'Hare). Under the Order, the FAA may modify or withdraw any provision in the order on its own or on application by any air carrier for good cause shown. The FAA proposes to eliminate the prohibition on trading or transferring (buying, selling, or leasing) arrival authorizations for consideration for the remaining duration of the Order. We believe there may be merit to allowing carriers to modify their schedules for competitive or operational reasons through various market mechanisms prior to the effective date of the August 29, 2006, final rule regulating scheduled arrivals at O'Hare.

The FAA invites air carriers and other interested persons to submit written comments by no later than September 29, 2006, in Docket FAA-2006-16944 on this proposal. After reviewing and evaluating the comments, the FAA expects to issue a final modification to the Order based on this proposal.

### **Background**

On August 18, 2004, the FAA issued an order limiting the number of scheduled arrivals that air carriers conduct at O'Hare during peak hours. The August 18 Order followed a period during which O'Hare operated without any regulatory constraint on the number of aircraft operations, and O'Hare experienced significant congestion-related delay. The Order took effect November 1, 2004, and was subsequently extended on March 25, 2005, October 6, 2005, and March 31, 2006. It terminates at midnight,

October 28, 2006, when the August 29, 2006, final rule, Congestion and Delay Reduction at Chicago O'Hare International Airport, becomes effective. 71 FR 51382.

The Order established two means through which air carriers can move an existing arrival that has been authorized under the Order and scheduled within the period from 7:00 a.m. through 8:59 p.m. The first is through requests for schedule changes that are subject to the Administrator's approval and a determination that the schedule change would not adversely affect operations or congestion at O'Hare, taking into account the strict limits on operations per hour that were established when the Order first took effect. The second is through a trade of an arrival time for another but on a one-for-one basis with another air carrier. Once again, the trade is subject to the Administrator's approval and a determination that the trade will not increase congestion or adversely affect operations at the airport. At the time of the Order, the FAA determined that these two mechanisms would provide carriers with adequate flexibility to make changes if necessary during peak hours of operation.

#### Order to Show Cause

When it issued the Order the FAA intended that it would be in effect for a short duration -- until the FAA published a final rule to limit scheduled arrivals at O'Hare and establish allocation, transfer and other procedures not included in the Order. The FAA did not anticipate that the Order would be extended through October 2006. Limiting trades of scheduled arrivals, so that they could occur only on a one-for-one basis and remain in place only for the duration of the Order, particularly when coupled with a prohibition on sales and leases, has had the unintended effect of eliminating any

flexibility to shift operations even when such shifts would not contribute to congestion or interfere with the hourly cap on operations.

In order to facilitate the most efficient transition from the Order to the final rule, the FAA proposes to allow carriers to make long-term adjustments to their holdings of scheduled arrivals during the last remaining days of the Order, as described below. Under this proposed modification, the FAA would accept permanent trades, which the FAA would then recognize at the effective date of the final rule. As several carriers have long-standing, multi-seasonal trades to adjust schedule operating times, this proposal would facilitate the finalization of those or other trades and transfers prior to the commencement of the 2006 winter scheduling season.

Underlying this proposed decision is that through the Order's elimination of a usage requirement, there are several scheduled arrivals that while allocated have not been fully utilized. It was not until August 29, 2006, when we issued the final rule on O'Hare operations, that carriers could have definitely known that under-utilized authorizations could be transferred for consideration rather than simply traded temporarily on a one-for-one basis.<sup>1</sup> Unintentionally, the FAA thus created a 2-month window in which carriers may have found it to their benefit to hold onto their arrivals rather than trade them, saving them potentially to obtain monetary value in a secondary market. We are concerned that this contributes towards an inefficient use of authorizations.

For these reasons the Administrator has tentatively determined that there is no longer any justification for maintaining a restriction that arrival authorizations may only be transferred on a one-for-one basis and a prohibition on sales, leases and other

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<sup>1</sup> Section 93.27 provides for the sale and lease of authorized authorizations in a blind, cash-only secondary market.

transactions that result in the transfer of arrival authorizations for consideration.

Therefore, with respect to scheduled flight operations at O'Hare under the August 2004 Order, as amended, the FAA proposes to adopt the following measures in substitution for ordering paragraph 6:

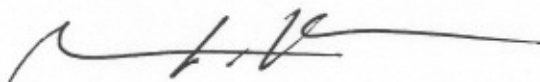
6. An air carrier who is currently operating or will operate at O'Hare by December 31, 2006, may buy, sell, lease or otherwise transfer or trade any scheduled arrival from 7:00 a.m. through 8:59 p.m. to or from any other air carrier who is operating or will operate at O'Hare by December 31, 2006. Each air carrier must receive advance written approval of the Administrator, or her delegate, of the trade or transfer. All requests to trade or transfer a scheduled arrival must be submitted in writing to the FAA Slot Administration Office, facsimile (202) 267-7277 or e-mail [7-AWA-Slotadmin@faa.gov](mailto:7-AWA-Slotadmin@faa.gov), and must come from a designated representative of the air carrier.

Request for Comments:

The FAA invites all interested persons to submit written comments on the proposals described in this order by filing their written views in Docket FAA-2006-16944 on or before September 29, 2006.

Issued in Washington, DC, on

SEP 22 2006



James W. Whitlow  
Deputy Chief Counsel for Policy and Adjudications